FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

February 26, 2007

In Reply Refer To:
Tennessee Gas Pipeline Company
Docket No. RP06-289-001

Tennessee Gas Pipeline Company
1001 Louisiana Street
Houston, Texas 77002

Attention: Marguerite Wong-Chapman, General Counsel

Reference: Substitute Third Revised Sheet No. 368
to FERC Gas Tariff, Fifth Revised Volume No. 1

Dear Ms. Wong-Chapman:

1. On May 30, 2006, Tennessee Gas Pipeline Company (Tennessee) filed the referenced tariff sheet in compliance with a Commission order issued on April 27, 2006.[1] As discussed below, the Commission accepts Tennessee's revised tariff language, subject to conditions discussed below.

2. Public notice of the filing was issued on June 29, 2006. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2004)). No comments or protests were filed.

3. Article XIX of the General Terms and Conditions (GT&C) of Tennessee's tariff permits it to acquire capacity on other pipelines. If Tennessee uses that off-system capacity to provide service to its customers, it will do so pursuant to the rates, terms, and condition of its own tariff. Consistent with the Commission's policy in *Texas Eastern*[2] concerning pipeline use of off-system capacity, the Commission has waived "the shipper must have title" policy for transportation service Tennessee provides under Article XIX.[3]

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[1] *Tennessee Gas Pipeline Co.,*115 FERC ¶ 61,120 (2006)(April 27 Order).

[2] Texas Eastern Transmission Corp., 93 FERC ¶ 61,273 (2000) (Texas Eastern).

[3] *Tennessee Gas Pipeline Co*., 96 FERC ¶ 61,045 (2001).

4. In the April 27 Order, the Commission accepted, subject to condition, Tennessee's proposal to modify Article XIX to provide that in the event that such off-system capacity is subject to renewal limitations, Tennessee will indicate, in any posting of the capacity used to render service, any limitation to extension rights that will apply as a result of limitations on the off-system capacity.

5. The Commission was concerned that Tennessee's proposal might lead to situations where the Rights of First Refusal (ROFR) of shippers transporting gas on off-system capacity under a transportation contract with Tennessee could be abridged. Section 284.221(d)(2)(ii) of the Commission's regulations requires that pipelines give maximum rate firm shippers with contracts for one year or longer a ROFR to extend their contracts. The Commission stated that under the *Texas Eastern* policy, the acquired capacity is subject to the Commission's open access rules at all times, and the Commission has only waived the "shipper must have title" policy to permit acquisition of off-system capacity when the acquiring pipeline will continue to offer the capacity under a tariff that fully complies with the requirements of Order Nos. 636 and 637, including the regulatory ROFR.[4] The Commission further explained that in rendering off-system capacity to its shippers, Tennessee must treat the acquired capacity as if it were an extension of its own facilities, and thus subject to its tariff. Under its own tariff, Tennessee is required to offer the regulatory ROFR to long-term customers paying the maximum rate for the service. To limit any of the requirements under Order Nos. 636[5] and 637[6] would be contrary to existing Commission policy.

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[4] April 27 Order, 115 FERC ¶ 61,120 at P 12, citin*g Unocal Keystone Gas Storage, LLC*, 113 FERC ¶ 61,266 at, P 12 (2005).

[5] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 636**,** 57 Fed. Reg. 13,267 (Apr. 16, 1992), FERC Stats. and Regs. ¶ 30,939 (1992); *order on reh'g*, Order No. 636-A**,** 57 Fed. Reg. 36,128 (Aug. 12, 1992), FERC Stats. and Regs. ¶ 30,950 (1992), *order on reh'g*, Order No. 636-B, 57 Fed. Reg. 57,911 (Dec. 8, 1992), 61 FERC ¶ 61,272 (1992), *order on reh'g*, 62 FERC ¶ 61,007 (1993), aff'd in part and remanded in part sub nom. United Distribution Cos. v. FERC, 88 F.3d 1105 (D.C. Cir. 1996), order on remand, Order No. 636-C, 78 FERC ¶ 61,186 (1997).

[6] Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, Order No. 637, 65 Fed. Reg. 10,156 (Feb. 25, 2000), FERC Stats. & Regs. ¶ 31,091 (2000), *clarifying*, Order No. 637-A, 65 Fed. Reg. 35,705 (June 5, 2000), FERC Stats. & Regs. ¶ 31,099 (2000), *denying reh'g*, Order No. 637-B, 92 FERC ¶ 61,062 (2000).

6. However, the Commission recognized that it had allowed limitations on the ROFR requirements in certain circumstances, such as when the ROFR requirement has been allowed to be eliminated in the context of capacity reservation cases, where the Commission permits pipelines to reserve existing unsubscribed capacity for a temporary period so that the capacity can be included as part of future expansion projects.[7] In such instances, pipelines are permitted to eliminate the ROFR requirement so long as they have the tariff authority to do so.

7. Therefore, the Commission accepted Tennessee's proposal subject to the condition that Tennessee clarify the language so that it is applicable only to the instances where the renewal limitations are set forth in the third party pipeline's tariff or in Tennessee's tariff. The Commission stated that Tennessee may only restrict its own shippers' ROFR rights relative to third-party pipeline capacity if the third-party pipeline's tariff imposes a limitation on ROFR rights, and if Tennessee wishes to impose such limitations relative to its own expansion projects it may do so only pursuant to limitations permitted by its own tariff.

8. In the instant filing, Tennessee proposes to specify that if the off-system capacity is subject to renewal limitations "as specified in a provider's tariff and/or as provided by FERC regulation," Tennessee will indicate such limitation to extension rights in any posting of the capacity. Tennessee describes three situations in which it may seek to waive the ROFR.

9. The first of these is where the pipeline from which Tennessee is acquiring the capacity has reserved it for potential use as part of an expansion, and that pipeline's tariff allows for it to sell such capacity to Tennessee without a renewal beyond the in-service of the expansion project. The second situation is where it purchases long-term capacity from another pipeline at a discount, and the pipeline's tariff does not allow for ROFR/renewal, as a matter of right, for service sold at less than maximum rates. The third situation is where Tennessee obtains capacity through a temporary release from a customer of another pipeline. Tennessee states if it were to acquire released capacity on a short term basis, it would have no right to renew beyond the release term.

10. The Commission accepts Tennessee's compliance filing, subject to conditions. The Commission recognizes that, in each of the situations described by Tennessee, it would obtain off-system capacity without any contractual right to retain that capacity beyond the expiration of its contract with the other pipeline. That is because the Commission's policy does not require the other pipeline to offer Tennessee a ROFR in any of these three situations. Given the limited term of Tennessee's rights to the off-

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[7] See, *e.g.*, Texas Gas Transmission, LLC, 111 FERC ¶ 61,480, at P 6 (2005); Iroquois Gas Transmission System, 100 FERC ¶ 61,279, at P 5 (2002).

system capacity, the Commission finds it reasonable for Tennessee to offer that capacity to its own customers subject to similar term limits. Otherwise, Tennessee would be discouraged from obtaining off-system capacity in circumstances where it would not have a ROFR. That would be contrary to the concern underlying the Commission's *Texas Eastern* policy that pipelines should be able to obtain capacity on other pipelines under the same conditions as other shippers seeking to obtain that capacity.[8]

11. However, the Commission is concerned that Tennessee not unnecessarily restrict the ROFR rights of shippers to whom it sells off-system capacity. In any of the situations described by Tennessee, it could acquire capacity, and then resell it at its own maximum recourse rates for a year or more, but not for the full length of its contract with the other pipeline. For example, Tennessee might acquire off-system capacity at a discount for fifteen or twenty years, and re-sell it at its own maximum rates for significantly shorter terms that would nevertheless normally qualify for a ROFR. In such circumstances, the Commission believes that Tennessee should offer a ROFR permitting its customer to extend its contract to the termination date of Tennessee's right to the capacity.

12. Therefore, Tennessee is directed to revise its proposed tariff language so that if it acquires capacity on a third party pipeline without a ROFR, and then resells such capacity at its maximum rate for a term that is a year or more, but less than the term of Tennessee's contract with the other pipeline, Tennessee must provide its customers a ROFR right to extend the contract to the termination date of Tennessee's contract with the other pipeline. Tennessee is directed to file this revised tariff language within fifteen days of the date of this order.

By direction of the Commission

Magalie R. Salas,
Secretary.

cc: All Parties
Public File

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[8] *Texas Eastern*. 93 FERC ¶ 61,273 at 61,885-6.